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Round Table On Self Regulation, Voluntary Compliance And Environmental Protection

Discussion Paper

This round table will bring together knowledgeable participants with diverse perspectives to discuss self regulation and voluntary compliance initiatives and to consider their use as effective and efficient ways to achieve environmental protection. To provide focus, this discussion paper sets out some of the terms and issues regarding self regulation, voluntary compliance and the environment.

Round Table Goals

1. **To discuss self regulation and voluntary compliance measures**, and their effectiveness at achieving both environmental protection and economic savings for Ontario.
2. **To identify research needs** for designing an objective test of effectiveness for these types of initiatives.

1. What Are Self Regulation And Voluntary Compliance?

For the purposes of this round table, self regulation and voluntary compliance are defined as follows:

Self regulation can include voluntary measures as well as other kinds of initiatives, such as self monitoring, reporting and certification, or the establishment of an industry-based regulatory body with the responsibility for monitoring its members' compliance with laws and policies aimed at protecting the environment. Generally, self regulation is intended to influence and shape the actions of the self regulated industry without having to rely on the traditional regulatory approach of command and control inspection and enforcement, with its subsequent greater government involvement.

Voluntary compliance includes purely voluntary pollution control measures by industry, voluntary efforts by industry to meet government pollution reduction challenges, negotiated performance agreements and memoranda of understanding between companies and government,

and voluntary adherence by companies to codes of practice and standards, such as the ISO 14000 series. Voluntary compliance measures may be designed to complement or enhance an existing environmental regulatory scheme, may replace regulations or stand alone.

2. Recent Experience With Voluntary Initiatives And Self Regulatory Approaches

Some examples of self regulation and voluntary initiatives are described below. These include purely voluntary measures by industry and citizens, as well as voluntary and self regulatory measures which have a regulatory foundation, or are otherwise encouraged by government.

- **Accelerated Reduction/Elimination of Toxics (ARET) Challenge** - This is a program and challenge to industries to virtually eliminate/reduce certain persistent, bioaccumulative and toxic substances and substance groups over the long term. Firms voluntarily agree to pursue the ARET target objectives, but there is no provision for signatories that fail to meet them.

- **Responsible Care Program** - This self-administered code of conduct and practice adopted by the Canadian Chemical Producers' Association (CCPA) in 1983 has led to reductions in emissions by its members.

- **Sustainable Forest Management (SFM) System** - This system was developed by the Canadian Standards Association, and incorporates a management process that is compatible with the ISO 14000 Environmental Management System. Developed in an open and broad-based forum, the SFM System is intended to instill a broader practice of sustainable forest management, and enable the identification of companies that manage forests according to the principles of sustainable forest management.

- **Ontario cottagers monitor water quality and clarity and provide information to the Ministry of Environment and Energy (MOEE)** - While cottagers are not directly responsible for overall quality of lake water, they are responsible for septic discharges. Their voluntary water quality monitoring augments MOEE monitoring work, and their feedback may affect inspection frequencies.

- **Proposal by the Hamilton District Autobody Repair Association (HARA) to the CCME's Working Group on Surface Coatings to establish an industry Autobody Repair Registration Inspection and Verification (ARRIV) Board to regulate autobody refinishers** - ARRIV would set new higher technology standards that could improve paint use efficiency, reduce emissions from solvent use and encourage use of low volatile organic compounds paint. The Ministry of Environment and Energy would pass a regulation supporting industry self regulation and allowing the ARRIV Board to grant

certificates of approval. Compliance with ARRIV's standards would be assured by having insurance companies pay only those auto body repair shops that have a certificate granted by ARRIV. The ARRIV Board could turn over information about non-compliance with new regulations to the MOEE's Enforcement Branch.

- **The Green Clean Project** - This is a voluntary pollution prevention initiative for the dry cleaning industry, whose partners included Environment Canada, the Ontario Ministry of Environment and Energy, the Ontario Fabricare Association and the Korean Drycleaners Association, in cooperation with non-governmental environmental organizations and municipal and U.S. government agencies. The project's purpose is to reduce and possibly eliminate chemical solvents such as perchlorethylene used in the dry cleaning industry. A pilot Green Clean Depot was established to determine what percentage of garments could be cleaned using the water-based Green Clean method. Preliminary results reported in 1994 showed 97.4 per cent of garments successfully Green Cleaned, and approximately 97-98 per cent of customers expressed satisfaction with the cleaning.

- **Financial contribution by member industries of Ontario Multi-Material Recycling Inc. (OMMRI, renamed Corporations Supporting Recycling in June 1996), such as the soft drink and paper industries, to help expand the Blue Box municipal recycling program which collects recyclable materials such as glass and plastic containers, paper products and metal cans** - For example, for the year 1993, the cost of Ontario's recycling program was approximately $86,000,000, five per cent of which was paid for by OMMRI grants. The Blue Box program has found high acceptance and involvement by citizens, who voluntarily source separate recyclable materials and place blue boxes at curbside. The program has helped establish a recycling system that has successfully diverted thousands of tonnes of waste from land fill.

3. Some Arguments For Voluntary Compliance And Self Regulatory Initiatives

- They provide incentives for industry to initiate environmental clean-up measures.

- They are more cost effective than regulations at achieving environmental protection, because they cost less to implement and enforce.

- They can be designed and implemented more quickly than Acts or regulations, and are thus more efficient for achieving environmental protection.

- They allow industries to design their own cost-effective environmental protection methods. Industries claim that they hold real potential for environmental benefits through emissions reductions.

- They provide greater flexibility in the process of how they are designed and implemented.
- They increase certainty for regulated industries.
- They can lead to a more cooperative climate among government, industry and other stakeholders.

4. Some Concerns Expressed About Voluntary Compliance And Self Regulation Initiatives

- Such initiatives are usually unenforceable and cannot bind members of industry associations. Remedies and a process for dealing with non-compliance may be unavailable without a regulatory backdrop.
- Voluntary compliance initiatives are undertaken by industry leaders, while non-compliers or free riders have the benefit of enhanced public image for the industry sector without the cost of implementing the initiative, causing an uneven playing field for businesses.
- Often the specific terms of the agreements and initiatives are negotiated in private or with the participation of selected stakeholders which results in fewer opportunities for the public to participate in environmental decision making (e.g. proposals for new environmentally significant regulations should be posted on the Environmental Registry, but voluntary agreements do not have to be posted). If it is unclear who the parties to voluntary compliance agreements are, some corporations may be disadvantaged if they are unable to participate in forming voluntary initiatives.
- Voluntary programs may be time consuming and expensive to design and implement, costing tax payers where government staff are developing these measures.
- Voluntary compliance and self regulation reduce government accountability and government's role in ensuring the public interest in environmental protection is met. Voluntary agreements implicitly bind the hand of governments that sign them, inhibiting regulation. This may happen without the public realizing that power has shifted from government.
- Voluntary agreements depend on the goodwill of industry and companies are naturally inclined to set goals and targets that are easy and inexpensive, even if they are not goals or targets that scientists or communities recommend.
- The long-term success of voluntary compliance agreements and industry self regulation in preventing pollution and cleaning up the environment is unknown and untested.

5. Current Self Regulation And Voluntary Compliance Measures In Ontario

Several voluntary compliance and self regulation measures have recently been introduced in Ontario which have the potential to affect the environment, including:

- **The *Safety and Consumer Statutes Administration Act, 1996 (SCSAA)*, which passed third reading on June 27, 1996**. The stated purpose of this new law is to enable industries and professions to have greater involvement in the marketplace and to delegate to mature industries the responsibility for self-management. The new law also establishes a self-funded, not-for-profit organization, the Technical Standards and Safety Authority, to give industries a greater role in delivery of public safety programs and services. The SCSAA delegates the role of Ministry of Consumer and Commercial Relations (MCCR) in monitoring, inspection, issuing orders and prosecuting to this not-for-profit corporation. Designated administrative authorities under the *SCSAA* who have MCCR regulatory powers delegated to them are explicitly not Crown employees or agents.

  One important environmental consequence of this initiative is that MCCR will transfer the training, licencing, inspection and prosecution of those responsible for underground fuel storage under the *Gasoline Handling Act (GHA)* to this new non-government organization.

- **Schedule O of Bill 26, the *Savings and Restructuring Act*, contained changes to Part VII of the *Mining Act* which governs the rehabilitation of mines and their closure.** Mine closure plans have to be filed by proponents of new or re-started advanced exploration and mine production projects, if they have not already done so. These closure plans will be self-certified by the company in accordance with the regulations, likely by a professional engineer. This self-certification system replaces the former system which required a Ministry of Northern Development and Mines Director to accept or reject a plan. Proponents can still file a closure plan for approval by the Director, but will have to pay an amount in advance for having the Ministry consider the closure plan or amendments for approval.

- **Bill 36, *An Act to Amend certain Acts administered by the Ministry of Natural Resources*, which passed third reading on June 27, 1996**. The provisions of Bill 36 allow the Minister to enter into agreements with licence holders under the *Crown Forest Sustainability Act* for forest renewal and maintenance activities necessary to provide for sustainability. The provisions of the Bill also permit the Minister to perform the obligations of a licence holder for a fee. The Ministry of Natural Resources could enter into agreements with smaller operators to enable the Ministry to perform certain forest management activities on their behalf. Larger companies with self-management capability would not need to enter into such agreements, and if the new legislation results in smaller

logging operations amalgamating with large companies, larger self-managing forestry companies could be taking on a greater forest management role than previously.

- **MOEE's proposal to revoke Marinas Regulation Reg. 351, and replace it with a voluntary code for marina operators**. This would occur after successful implementation of the voluntary Code of Environmental Practice for marinas and yacht clubs. The Code is intended to go beyond the current Reg. 351 requirement for marinas to provide adequate shore-based pump-out facilities for boats.

- **MNR's move toward self-monitoring in the aggregate industry, as proposed in Bill 52, the *Aggregate Resources Statute Law Amendment Act (ARSLAA)*,which allow licensees to file annual compliance reports regarding compliance with the Act, regulations, site plan, and other licence conditions**. The previous *Aggregate Resources Act* section provided that the MNR would inspect aggregate sites yearly, and a written report on this could be examined by anyone. The Minister offered the following statement at first reading: "the Ministry will develop compliance partnerships whereby [the aggregate] industry will be responsible for the day-to-day site inspections and monitoring ...". (The *ARSLAA* is currently before the Standing Committee on General Government, before going to third reading.)

Glossary & Notes on Terms Used

Some of the concepts mentioned in this paper have been defined or discussed as follows:

Voluntary Agreements

Voluntary agreements are generally arrangements (called 'memorandums of understanding') between an administrative department of government and an industry trade association, the purpose of which is to reduce pollution.

> Glenna Ford, "Voluntary agreements and environmental protection", Editorial, GreenViews - Spring 1996

Voluntary Initiatives

In Ontario, there are essentially two broad categories of [voluntary] initiatives. The first category is where the government attempts to "challenge" industrial sectors to improve their performance. These types of programs supplement existing regulatory programs rather than attempting to replace them. ... The second category of voluntary program pertains to 'voluntary agreements'. ... The basic thrust of these agreements is to have industry reduce specific pollutant emissions through series of actions identified in the agreement.

> Michelle Swenarchuk and Paul Muldoon, Canadian Environmental Law Association,"Deregulation and Self-Regulation in Administrative Law: A Public Interest Perspective", (Address to Deregulation, Self-Regulation and Administrative Law Conference, March 1996) [unpublished].

Performance Agreements

The Ministry [of Environment and Energy] is proposing the promotion of continuous improvement of industry's performance through a series of government incentives and rewards balanced by industry commitment to performance and accountability. This relationship would be formalized through contractual performance agreements.

> Ontario Ministry of Environment and Energy, *Responsive Environmental Protection: Reforming Environment and Energy Regulation in Ontario* (Toronto: Queen's Printer, 1996) at 57.

Promotion of Voluntary Action

The Ministry [of Environment and Energy] has instituted, or is working on, a number of initiatives that recognize and encourage voluntary action by industry. For example, under the Ministry's Pollution Prevention initiative, Memoranda of Understanding are in place with five industry sectors. The participants have voluntarily undertaken numerous pollution prevention projects which achieved significant reductions in waste generation and release. The Ministry is also exploring new relationships that give businesses greater operational flexibility, more regulatory certainty and streamlined approvals in return for voluntary commitments to action beyond compliance, along with rigorous pollution prevention planning, auditing and reporting.

> Ontario Ministry of Environment and Energy, *Responsive Environmental Protection: Reforming Environment and Energy Regulation in Ontario* (Toronto: Queen's Printer, 1996) at 58.

Traditional Regulatory Approach/Command and Control Approach

The traditional regulatory approach is best defined as a system of environmental protection in which governments set out (through legislation, regulation and specific permissions) legal parameters within which those with potential impacts on the environment must operate, or face prosecution. This approach emphasizes intensive and adversarial negotiation of standards, advance approvals of specific technologies and extensive inspection and enforcement.

> Ontario Forest Industries Association, "Beyond Compliance: Toward a Continual Improvement System of Environmental Protection in Ontario's Forest Industries", submission of Ontario Forest Industries Association to the Ontario Ministry of Environment and Energy 1996 Review "Reforming Ministry Regulations", April 15, 1996, at 2.

Self Regulation

The notion of self regulation covers a range of possibilities, including self definition of the rules and procedures; adapting existing rules and procedures to individual circumstances through compliance plans; self reporting, monitoring and certification; third party monitoring and certification; voluntary self regulation, voluntary codes of practice and standards.

> Dr. Oonagh Fitzgerald, Department of Justice, "Current Directions in Federal Regulatory Reform and New Approaches to Compliance", (Address to Deregulation, Self-Regulation and Administrative Law Conference, March 1996) [unpublished].